

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FRIEDA ANNA LOUISE ZIMMERMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-4470

Decision No. CU -6834

Petition to reopen; Order of Dismissal dated and entered June 13, 1968.

FINAL DECISION

This claim against the Government of Cuba opened by the Commission on behalf of the then absent claimant has been dismissed by Order of the Commission No. CU-66 dated June 13, 1968, for the reason that claimant, upon her return from Cuba to the United States in 1967 failed to prosecute the claim.

Subsequently, claimant requested that the claim be reopened and submitted supporting evidence, including documentation showing that she acquired United States citizenship by naturalization on December 7, 1955. In the claims application claimant stated that her losses aggregating \$80,600.00 were based upon 75 acres of ranch land in Santa Barbara, Isle of Pines, with an eight room residence thereon; upon securities, personal property and bank accounts. Additionally, claimant asserted a claim for personal injuries sustained in Cuba during the revolution.

Upon due consideration, claimant's request for the reopening of the claim is granted, the Order of Dismissal is set aside and this decision will be entered.

(1) Ranch at Santa Barbara, Isle of Pines

The evidence shows that claimant was the record owner of all the outstanding shares of stock of Compania de Fomento Palm Springs S.A. (Palm Springs Development Company), a corporation organized under the laws of Cuba. The

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(1) Ranch at Santa Barbara, Isle of Pines

The evidence shows that claimant was the record owner of all the outstanding shares of stock of Compania de Fomento Palm Springs S.A. (Palm Springs Development Company), a corporation organized under the laws of Cuba. The

evidence further shows that this corporation was the record owner of land with improvements known as "Palm Spring Estates" near Santa Barbara, on the Isle of Pines, described in more detail below.

Since Compania de Fomento Palm Springs S.A. was organized under the laws of Cuba, it does not qualify as a corporate national of the United States within the meaning of Section 502(1)(B) of the Act, which defines the term "national of the United States" as a corporation or legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest (see Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33).

According to the community property laws of Cuba, the property acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney et al., Claim No. CU-0915). Accordingly, the property discussed under this headline and other property discussed below will be deemed as having been owned by the claimant and her now deceased husband Albert Herman Robert Zimmerman, a national of the United States by naturalization, in equal shares. Claimant's husband died on October 7, 1966, and left an instrument purported to be his last will executed in 1945, but this instrument was never probated. The Commission is therefore constrained to apply the laws of intestacy of Cuba, where the deceased was domiciled and the property was located. Under this law the property of a deceased spouse descends to his children subject to a life estate for the benefit of the surviving spouse. In the present case the property of claimant's late husband descended to his adopted son Heinz Wilhelm Otto Zimmerman subject to a life estate in the claimant in

one-third of her husband's estate. As a result, claimant upon the death of her husband, owned in her own right a one-half interest in the outstanding shares of the Palm Springs Development Company, and a life estate in one-sixth of the outstanding shares.

The record shows that some land of the Palm Springs Development Company was taken by the Government of Cuba for agricultural purposes in 1961, but the more valuable land near the residence and the buildings remained in control of the Zimmermans until claimant's departure from Cuba on December 3, 1967. The Cuban Government published in its Official Gazette of December 6, 1961 Law 989 which effectively confiscated all assets, real and personal property, rights, shares of stock, bonds and other property of persons who left Cuba. The Commission, therefore, finds that claimant's interest in the securities was taken by the Government of Cuba on December 3, 1967, the date of claimant's departure from Cuba (see also Claim of Wallace Tabor, et al, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]).

Although the claim itself was timely filed it appears that claimant's loss did not arise until 1967, subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period (see Claim of Vivian Lopez Morales, Claim No. CU-8739).

The record further shows that at the time of the loss the adopted son, Heinz Wilhelm Otto Zimmerman, was not a national of the United States. Section 504(a) of the Act provides that a claim shall not be considered under Section 502(a) of the Act unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Since the property inherited by Heinz Wilhelm Otto Zimmerman was not owned by a national of the United States on the date of the loss, a claim based upon his portion of the inheritance cannot be considered here, and the determination of the claim will be confined to the property interests of the claimant.

The value of claimant's interest in the Palm Springs Development Company remains to be determined. The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The evidence in this claim discloses that the assets of the Palm Springs Development Company consisted of 75 acres of land along the highway Nueva Gerona - Santa Barbara on the Isle of Pines improved with a residence and other auxiliary structures. The evidence further discloses that after the acquisition of the property, claimant invested substantial amounts of money in the development of the land by constructing roads, bridges, fences and other valuable improvements. Ultimately the property consisted of 122 subdivided land parcels for building purposes measuring 70 acres and of a park and tropical orchard of 5 acres surrounding the residence. The entire property was fenced in, all buildings and two newly added garages were of fireproof and hurricaneproof material. At the edge of the orchard were erected chicken farms in accordance with local requirement and regulations.

Based upon the entire record, the Commission finds that at the time of the loss the 122 lots measuring 70 acres were worth \$28,000.00 and that the 5 acres of landscaped parks and orchards with the residence and other

structures thereon had a value of \$32,000.00; the entire property thus had a value of \$60,000.00.

There is no evidence that the company had any liabilities, and the Commission concludes that at the time of loss, the Palm Springs Development Company had a net worth of \$60,000.00. Claimant's loss is equal to her one-half interest in the outstanding shares plus a life estate in one-sixth of the outstanding shares.

In evaluating life estates and remainder interests, the Commission has adopted the Makehamized mortality table used by the United States Treasury Department in the collection of gift and estate taxes (see Claim of Richard Franchi Alfaro et al, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71). Pursuant to that method of valuation, a life interest in property of a person of 72 years of age, which was claimant's age at the time of loss, corresponds to .25059 of the estate left by the deceased. Accordingly, claimant's life estate at the time of loss had a value of .25059 of \$10,000.00, or \$2,505.90.

Accordingly, the Commission finds that with respect to her interest in the Palm Springs Development Company claimant suffered a loss in the aggregate amount of \$32,505.90.

(2) Cia. Petrolera y Refinadora Fertrueba S.A.

Claimant states that she was the owner of 100,000 shares in the capital stock of Cia. Petrolera y Refinadora Fertrueba S.A. (Fertrueba Oil and Refining Company) which she had acquired at 10 cents per share. In support of this portion of the claim, claimant submitted a photocopy of the stock certificate issued to her name on October 8, 1957. No evidence was submitted to disclose the assets and liabilities of the company, nor is any record before the Commission to show the value of the shares of stock at the time of the asserted loss. In the absence of any evidence concerning the value of the shares of stock, this portion of the claim cannot be considered and it is therefore denied.

(3) Personal Property

A claim was originally asserted for the loss of personal property (furniture, household goods, clothing, tools, equipment, motor vehicles and

machinery) in the aggregate amount of \$9,600.00. Subsequently, claimant included jewelry, other valuables, certain bank accounts and Traveler's checks, and increased the amount of the claim for these items to \$16,588.56. The claim for the loss of bank accounts and Traveler's checks will be discussed below under (4).

With respect to the jewelry and other valuables, the evidence before the Commission does not reveal that these property items were taken by the Government of Cuba. In the absence of such evidence, the portion of the claim relating to jewelry and other valuables is denied.

On the other hand the evidence discloses that claimant and her late husband were the joint owners of furniture, household goods, clothing, a 1958 Chrysler automobile, a 1-1/2 ton trailer, and of equipment and tools which were taken by the Government of Cuba under Law 989 (supra) on December 3, 1967.

Based upon the entire record, the Commission finds that at the time of taking the value of these personal property items, after reductions for depreciation, was \$6,400.00. For the reasons stated above under (1) claimant had a one-half interest in this property valued at \$3,200.00, plus a life interest in one-sixth of the property valued at \$267.30. The Commission, therefore, concludes that claimant suffered a loss with respect to the personal property discussed under this heading in the amount of \$3,467.30.

(4) Bank Accounts and Traveler's Checks

Claimant states that she owned a bank account No. 12086 in the Banco Financier of Nueva Gerona with a balance of \$886.56 and her late husband Albert H. R. Zimmerman a bank account No. 302 in the same bank with a balance of \$2,100.80 still outstanding at the time of her departure from Cuba. Additionally, claimant states, she and her husband owned unused Traveler's checks in the amount of \$2,100.00. Claimant asserts that at the time of her departure from Cuba she was forced to surrender the passbooks and the checks to agents of the Cuban Government.

The Commission finds that claimant and her late husband jointly owned the bank accounts and Traveler's checks in the aggregate amount of \$5,087.36;

that at the time of her departure from Cuba on December 3, 1967 these property items were confiscated by the Government of Cuba; and that for the reasons already stated claimant suffered a loss in the amount of \$2,543.68 plus \$212.47, aggregating \$2,756.15, corresponding to her original one-half interest in this property plus her life interest in 1/6th of the property.

(5) Personal Injuries

Claimant states that she was twice injured during the revolution in Cuba. The first time when she was a guest in the Hotel Plaza in Havana, she slipped and fell in the bathroom, hurting thereby her spine, neck and wrist. The second injury occurred while she was held up in front of her residence in Santa Barbara and fell from the veranda to the floor, thereby damaging permanently three vertabrae. As a result her hips are out of level and she has great pains in the back, and difficulty in walking.

Section 503(b) of the Act conferred jurisdiction to the Commission to determine claims against the Government of Cuba for disability and death resulting from actions taken by or under order of the authority of the Cuban Government. The Commission finds that claimant has failed to submit evidence to show that her injuries in Havana and at her residence in Santa Barbara were a result of actions taken by the Government of Cuba or by its agents. To the contrary, all the circumstances surrounding this matter indicate that the injuries occurred without interference by the Cuban Government or its agents, and were a result of two unfortunate accidents, not attributable to governmental actions.

Accordingly, the portion of the claim relating to personal injuries is denied.

Recapitulation

Summarizing, claimant suffered losses within the meaning of Title V of the Act, as follows:

Shares of stock in Palm Springs Development Company	\$32,505.90
Personal property	3,467.30
Bank accounts and checks	<u>2,756.15</u>
Total	<u>\$38,729.35</u>

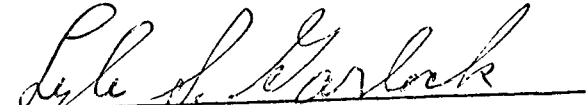
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of the loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

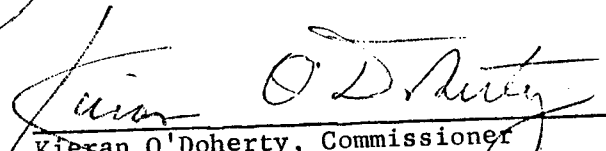
CERTIFICATION OF LOSS

The Commission certifies that FRIEDA ANNA LOUISE ZIMMERMAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Eight Thousand Seven Hundred Twenty-Nine Dollars and Thirty-Five Cents (\$38,729.35) with interest thereon at 6% per annum from December 3, 1967 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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